

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Real Source Title, LLC;  
Minnetitle, LLC; A-1 Settlement Services;  
John C. Povejsil;<sup>1</sup> and Jason E. Fischer

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson on March 4, 2010, at the Office of Administrative Hearings in St. Paul, Minnesota. The OAH record remained open until March 24, 2010, for Respondents Real Source Title, LLC, Minnetitle, LLC, and A-Settlement Services to respond to the Motion for Default filed by the Department of Commerce.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department).

Steven E. Wolter, Attorney at Law, appeared on behalf of Respondent Jason E. Fischer.

There was no appearance at the March 4, 2010, hearing by, or on behalf of, Real Source Title LLC, Minnetitle, LLC, A-1 Settlement Services, or John C. Povejsil, (Respondents). The Department filed a motion urging the Administrative Law Judge to recommend that Respondents Real Source Title LLC, Minnetitle, LLC, and A-1 Settlement Services be found in default.

The Department did not request that Respondent John C. Povejsil be found in default because it had located a more recent address for Mr. Povejsil and wished to serve him with an amended Notice of and Order for Hearing at that address. A new hearing date of April 14, 2010, was selected as to Mr. Povejsil, and the matter involving him will be the subject of a separate Report to be issued by the Administrative Law Judge.

Prior to the start of the hearing on March 4, 2010, counsel for the Department and Respondent Fischer notified the Administrative Law Judge that they had reached a stipulation under which Respondent Fischer agreed that he would not admit the allegations set forth in the Statement of Charges but would not contest them, and reserved the right to make argument to the Commissioner regarding the appropriate

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<sup>1</sup> John Povejsil is not encompassed in these Findings of Fact, Conclusions and Recommendation. The Department notified the Administrative Law Judge at the March 4, 2010, hearing that it had located a more recent address for Mr. Povejsil and wished to serve Mr. Povejsil at that address.

sanction to be imposed against him. As a result, the March 4, 2010, hearing was cancelled as to Respondent Fischer and a telephone conference between counsel and the Administrative Law Judge was held to discuss the terms of the agreement reached between the parties. The stipulation reached by the Department and Mr. Fischer is reflected in this Report.

### **STATEMENT OF THE ISSUES**

1. Did the Respondents encompassed in this Report (Real Source Title, LLC; Minnetitle, LLC; A-1 Settlement Services; and Jason E. Fischer):
  - a. violate insurance laws subject to the Commissioner's authority, in violation of Minn. Stat. § 60K.43, subd. 1(2) (2008);
  - b. improperly withhold, misappropriate or convert money or property received in the course of doing insurance business, in violation of Minn. Stat. § 60K.43, subd. 1(4) (2008);
  - c. engage in fraudulent and dishonest practices demonstrating their untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 60K.43, subd. 1(8) (2008);
  - d. improperly withhold, misappropriate and convert monies belonging to others and engage in fraudulent and dishonest practices, in violation of Minn. Stat. § 72A.20, subd. 18 (2008);
  - e. fail to remit monies belonging to another, in violation of Minn. Stat. § 82.41, subd. 13(a)(11) (2008);
  - f. make material misrepresentations, in violation of Minn. Stat. § 82.41, subd. 13(a)(9) (2008);
  - g. make misrepresentations in order to induce the consummation of a real estate transaction, in violation of Minn. Stat. § 82.41, subd. 13(a)(10) (2008);
  - h. fail to properly maintain an escrow account, in violation of Minn. Stat. § 82.50, subd. 1 (2008);
  - i. convert monies that should have remained in the escrow account, in violation of Minn. Stat. § 82.50, subd. 5(d) (2008); or
  - j. sell insurance without an agency license, in violation of Minn. Stat. § 60K.32 (2008)?
2. Did Respondent Fischer dishonestly discharge his duties as a notary public in violation of Minn. Stat. § 359.12 (2008)?

3. If so, are Respondents subject to discipline and/or a civil penalty?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On February 5, 2010, the Department served a Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges in this matter on the Respondents Real Source Title, LLC, Minnetitle, LLC, A-1 Settlement Services, Jason E. Fischer, and John C. Povejsil at the following address: 12 Long Lake Road, Suite 19, Mahtomedi, MN 55155.<sup>2</sup> To the knowledge of counsel for the Department, these mailings were not returned by the U.S. Postal Service.

2. The Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges indicated that the hearing in this matter was scheduled to be held on March 4, 2010.<sup>3</sup>

3. The Notice and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges in this matter included the following statements:

Respondents' failure to appear at the prehearing conference or hearing may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

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Pursuant to Minn. Stat. § 45.027, subd. 6 (2008), Respondents may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondents violated any law, rule or order related to the duties entrusted to the Commissioner.<sup>4</sup>

4. On March 3 and 4, 2010, counsel for the Department and Respondent Jason E. Fischer notified the Administrative Law Judge that they had reached a stipulation. Under the stipulation, Respondent Fischer does not admit the allegations contained in the Statement of Charges but will not contest those allegations. The parties also stipulated that Respondent Fischer reserves the right to make argument to the Commissioner regarding the appropriate sanction to be imposed against him. As a result, the March 4, 2010, hearing was cancelled as to Respondent Fischer.

5. Respondents Real Source Title, LLC, Minnetitle, LLC, and A-1 Settlement Services did not file a notice of appearance or make any request for a continuance or

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<sup>2</sup> See, Affidavit of Service by U.S. Mail (February 5, 2010).

<sup>3</sup> Notice and Order for Hearing, at 3.

<sup>4</sup> Notice and Order for Hearing, at 9 (¶ 1) and 11 (¶ 10).

any other relief in response to the Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges. Respondents Real Source Title, LLC, Minnetitle LLC, and A-1 Settlement Services failed to appear at the hearing on March 4, 2010, and no one appeared on their behalf.

6. By letter dated March 8, 2010, counsel for the Department requested that a default recommendation be issued regarding Respondents Real Source Title, LLC, Minnetitle LLC, and A-1 Settlement Services, and that the Administrative Law Judge recommend disciplinary action be imposed against them. The Office of Administrative Hearings forwarded a copy of the Department's default request to all of the Respondents at 12 Long Lake Road, Suite 19, Mahtomedi, MN 55115. The mailings sent to Real Source Title and John Povejsil were returned to the Office of Administrative Hearings with the following notation: "Return to Sender Attempted Not Known Unable to Forward."

7. Because Respondents Real Source Title, LLC, Minnetitle LLC, and A-1 Settlement Services failed to appear at the hearing in this matter, they are in default.

8. Pursuant to Minn. Stat. § 60K.43, subd. 2, and Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges are hereby taken as true with respect to Respondents Real Source Title, LLC, Minnetitle LLC, and A-1 Settlement Services, and are incorporated into these Findings of Fact.

9. Based on the stipulation entered into between the Department and Respondent Jason Fischer, the allegations contained in the Statement of Charges with respect to Respondent Fischer are not admitted but are not contested. Those allegations are hereby incorporated into these Findings of Fact, with the understanding that Mr. Fischer reserves his right to present argument to the Commissioner regarding what, if any, sanctions should be imposed.

10. Following the March 4, 2010, hearing, the Department served Respondent John C. Povejsil at 1387 Stanford Avenue, St. Paul, MN 55104, with an amended Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges, setting a new hearing date of April 14, 2010, for the allegations against him.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. The Notice and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges was proper, and the Department has complied with all relevant procedural legal requirements.

3. Respondents Real Source Title, LLC, Minnetitle LLC, A-1 Settlement Services, and Jason Fischer received notice of the charges against them and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges may be taken as true or deemed proved without further evidence.

5. Respondents Real Source Title, LLC, Minnetitle LLC, and A-1 Settlement Services, having made no appearance at the hearing, and not requesting any continuance or relief, are in default. Pursuant to Minn. Stat. § 60K.43, subd. 2, and Minn. R. 1400.6000, the allegations contained in the Statement of Charges with respect to them are hereby taken as true.

6. Respondent Jason Fischer has entered into a stipulation with the Department under which he does not admit but will not contest the allegations set forth in the Statement of Charges. Accordingly, the allegations contained in the Statement of Charges with respect to Respondent Fischer are also taken as true.

7. Based upon the facts set forth in the Statement of Charges, Respondents Real Source Title, LLC, Minnetitle LLC, A-1 Settlement Services, and Jason Fischer violated insurance laws subject to the Commissioner's authority; improperly withheld, misappropriated or converted money or property received in the course of doing business; and engaged in fraudulent and dishonest practices demonstrating their untrustworthiness and financial irresponsibility, in violation of Minn. Stat. § 60K.43, subd. 1(2), (4), and (8) (2008).

8. Based upon the facts set forth in the Statement of Charges, Respondents Real Source Title, LLC, Minnetitle LLC, A-1 Settlement Services, and Jason Fischer improperly withheld, misappropriated and converted monies belonging to others and engaged in fraudulent and dishonest practices, in violation of Minn. Stat. § 72A.20, subd. 18 (2008).

9. Based upon the facts set forth in the Statement of Charges, Respondents Real Source Title, LLC, Minnetitle LLC, A-1 Settlement Services, and Jason Fischer made material misrepresentations, in violation of Minn. Stat. § 82.41, subd. 13(a)(9) (2008), and made false or misleading statements in order to induce the consummation of a real estate transaction, in violation of Minn. Stat. § 82.41, subd. 13(a)(10) (2008). .

10. Based upon the facts set forth in the Statement of Charges, Respondents Real Source Title, LLC and Jason Fischer failed to remit monies belonging to another, in violation of Minn. Stat. § 82.41, subd. 13(a)(11) (2008); failed to properly maintain escrow accounts, in violation of Minn. Stat. § 82.50, subd. 1 (2008); and converted

monies that should have remained in escrow accounts, in violation of Minn. Stat. § 82.50, subd. 5(d) (2008).

11. Based upon the facts set forth in the Statement of Charges, Respondents Real Source Title, LLC, Minnetitle LLC, and A-1 Settlement Services sold insurance without an agency license, in violation of Minn. Stat. § 60K.32 (2008).

12. Based upon the facts set forth in the Statement of Charges, Respondent Jason E. Fisher dishonestly discharged his duties as a notary public in violation of Minn. Stat. § 359.12 (2008).

13. The imposition of disciplinary action against Respondents is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Commissioner of Commerce discipline, censure, and/or impose an appropriate civil penalty against Respondents Real Source Title, LLC, Minnetitle LLC, A-1 Settlement Services, and Jason E. Fischer.

Dated: April 19, 2010

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Default (no digital recording)

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62,

subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.